

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1570 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DIVISIONAL CONTROLLER GUJ STAT ROAD TRANSPORT CORPN

Versus

R B RATHOD

Appearance:

MR HARDIK RAVAL for Petitioner

MR SURESH M SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 09/08/1999

ORAL JUDGEMENT

In this petition under Article 227 of the Constitution the Divisional Controller, Gujarat State Road Transport Corporation, has challenged the award passed by the Labour Court, Navsari, directing the S.T. Corporation to reinstate the petitioner to his original post of conductor with continuity of service but without back wages.

2. The respondent-employee was employed as conductor by the Gujarat State Road Transport Corporation. On 8th July 1979 when the respondent was a conductor on the bus plying on the Vapi-Chival route it was found that the respondent-conductor had collected the fare but did not issue tickets to three passengers, and reissued used tickets to 7 other passengers and did not issue tickets to several other passengers. On these allegations the departmental inquiry was held against the respondent. At the conclusion of the departmental inquiry the respondent was found to be guilty and order of dismissal was passed against the respondent on 8-7-1979. The respondent raised an industrial dispute which was referred to the Labour Court. The respondent gave up challenge to the legality of the departmental inquiry but submitted that the punishment imposed was grave looking to the misconduct. The Corporation presented the previous service record showing that in the past also there were several cases of misconduct majority of which were relating to non-issuance of tickets. The Labour Court however took the view that since the respondent was out of job for about five years denying him back wages for the said period would amount to sufficient penalty and therefore purporting to exercise the powers under section 11A of the Industrial Disputes Act, 1947, the Labour Court passed the award for reinstatement to the original post with continuity of service but without back wages. It is the aforesaid award which is challenged in the present petition.

3 Mr Hardik Rawal for the petitioner contended that in view of the fact the respondent had been found guilty of 18 different misconducts including misconduct with regard to non-issuance of cheques on several occasions in the past, the award passed by the Labour Court was not at all warranted and the sympathy in favour of the respondent-workman was misplaced.

4 On the other hand, learned counsel for the respondent, has supported the award of the Labour Court and has submitted that after taking into consideration all the relevant facts including the previous service record of the respondent, the Labour Court has passed the award. Therefore, in exercise of the jurisdiction under Article 227 this Court may not interfere with the impugned award.

5 Having heard the learned counsel for the parties it appears to the Court that when the respondent was already involved in serious misconducts as many as 18 times in the past in a short span of four years of

service and majority of such misconducts pertained to the charge of non-issuance of tickets and since issuance of tickets and collecting fare from passengers is the principal duty of the conductor and in the four years of service respondent was found guilty of misconduct on 18 occasions, discretion under Section 11A could not have been exercised in favour of the respondent. In view of the above, the petition deserves to be allowed.

6 During the pendency of petition there was stay of the operation and execution of the award subject to the provisions of 17-B of the Industrial Disputes Act. There is nothing on record to show as to what were steps taken by either party in respect of the continuation of the interim stay. In any case, if the respondent was paid any amount under the provisions of Section 17B of the Act, the respondent-employee has got sufficient benefit out of these proceedings and therefore also nothing further is required to be done in the matter.

7 The petition is accordingly allowed. Rule is made absolute. Judgement and award of the Labour Court in Reference (LCA) No.50 of 1983 is hereby set aside. The respondent shall however be entitled to retain the benefits availed of under section 17B of the Act. There shall be no order as to costs.

(mohd)